

## AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (hereinafter referred to as "this Lease"), made this 21<sup>st</sup> day of March, 1990, by and between the STATE OF MARYLAND to the use of the DEPARTMENT OF NATURAL RESOURCES, an agency of the State of Maryland (hereinafter referred to as "the Landlord"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (hereinafter referred to as "the Tenant"),

WITNESSETH, THAT FOR AND IN CONSIDERATION of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, in its "as is" condition, all of that real property, situate and lying in Montgomery County, Maryland, which consists of approximately 100± acres of land as shown on a plat attached hereto as Exhibit A (hereinafter referred to as "the Premises"), being a tract of land (hereinafter referred to as "the Land") described in a deed dated August 11, 1989, from The State of Maryland, State Highway Administration of the Department of Transportation to the Landlord and recorded in the Land Records of Montgomery County, Maryland on September 20, 1989 in Liber 9000, folio 673.

SUBJECT TO THE OPERATION AND EFFECT of any and all instruments and matters of record or in fact,

UPON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth:

### Section 1. Term.

#### 1.1. Length.

This Lease shall be for a term (the "Term") of twenty (20) years beginning on October 1, 1989 and terminating on September 30, 2009.

1.1.1. Renewal Terms. This Lease may be renewed for two (2) additional terms of ten (10) years each (hereinafter referred to as a "Renewal Term") provided the Tenant notifies the Landlord in writing, by at least ninety (90) days before the end of the then-current term, that the Tenant elects to renew this Lease at the end of such current-term. In such event this Lease shall be so renewed (the Original Term and, if this Lease is renewed for the Renewal Term or otherwise, the period of any such renewal being hereinafter referred to as "the Term"); provided that, at the Landlord's option, such renewal shall not be effective if an Event of Default (as that term is hereinafter defined) exists at the end of the Original Term. Any such renewal shall be upon the same terms and subject to the same conditions which are set forth in the provisions of this Lease, except that the Tenant shall have no additional renewal right as created by the provisions of this paragraph 1.1.1 at the end of the Second (2nd) renewal term, if any, it being expressly understood that this Lease shall be for Term of no longer than forty (40) years, including Renewal Terms.

1.1.2. Confirmation of commencement and termination. The Landlord and the Tenant shall, at the request of either party, confirm, in writing, that, such commencement or such termination has occurred, setting forth therein the Commencement Date and the Termination Date.

1.2. Surrender. The Tenant shall at its expense, at the expiration of the Term or any earlier termination of this Lease, (a) promptly surrender to the Landlord possession of the Premises (including any fixtures or other improvements which, under the provisions of Section 5, are owned by the Landlord) in good order and repair (ordinary wear and tear excepted), (b) remove therefrom



the Tenant's signs, goods and effects and any machinery, trade fixtures and equipment on the Premises which are not owned by the Landlord, and (c) repair, to Landlord's satisfaction, any damage to the Premises or the property caused by such removal, provided however, that in no event shall Tenant be required to return the Premises to a condition over and above that which existed prior to the Tenant's use and occupancy there of.

Section 2.        Rent.

2.1. Amount.    As rent for the Premises (all of which is hereinafter referred to collectively as "Rent"), the Tenant shall pay to the Landlord all of the following:

2.1.1.    Annual Rent.    An annual rent (hereinafter referred to as "the Annual Rent") equal to One Dollar (\$1.00) per Year, due and payable in advance on the first (1st) of October of each Lease Year.

2.1.2.    Additional Rent.    Additional rent (hereinafter referred to as "Additional Rent") in the amount of any payment referred to as such in any provision of this Lease which accrues while this Lease is in effect (which Additional Rent shall include any and all charges or other amounts which the Tenant is obligated to pay under any of the provisions of this Lease, other than the Annual Rent), due within thirty (30) days after receipt of written notice from Landlord to Tenant.

2.2. Where payable.    The Tenant shall pay the Rent, in lawful currency of the United States of America, to the Landlord by delivering or mailing it to Department of Natural Resources, Accounting Division, Tawes State Office Building B-4, 580 Taylor Avenue, Annapolis, Maryland 21401, or to such other address or in such other manner as the Landlord from time to time specifies by written notice to the Tenant.

Section 3.        Use of Premises.

3.1. The Tenant shall occupy and use the Premises for and only for the purpose of operating and maintaining a public park designed solely for passive recreational use.

3.2. In its use of the Premises, the Tenant will not perform (nor permit to be performed) on any portion of said Premises, any illegal, immoral or objectionable act or acts that might constitute a public nuisance.

3.3. Permits, Licenses and Compliance with Legal Requirements.

The Tenant shall be responsible for obtaining all permits, licenses, inspections and approvals required for its use and occupancy of the Premises. The Tenant's use and occupancy of the Leased Premises shall be in compliance with the requirements of all applicable Federal, State and local laws, ordinances, rules and regulations, including all applicable regulations promulgated by the State of Maryland, Department of Natural Resources.

Section 4.        Insurance and indemnification.

4.1. Insurance to be maintained by Tenant.

4.1.1.    The Tenant shall maintain at its expense, throughout the Term, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the Premises or arising out of the use thereof by the Tenant or its agents, employees, officers, subtenants, invitees, visitors and guests, under one or more policies of General Comprehensive Liability insurance having such limits as to each as are reasonably required by the Landlord from time to time, but in any event of not less than a minimum coverage



of \$1,000,000 combined single limit per occurrence, and shall contain broad form CGL Endorsement or its equivalent. The Tenant shall also maintain, at its own expense throughout the Term, all risk or fire and extended coverage insurance covering any improvements hereafter made to the Premises, at full replacement value. Each such policy shall (a) name as the insureds thereunder the Landlord and the Tenant, (b) by its terms, be considered primary and non-contributory with respect to any other insurance (if any) carried by the Landlord or its successors and assigns, (c) by its terms, be cancellable only on at least thirty (30) days prior written notice to the Landlord, and (d) be issued by an insurer of recognized responsibility licensed to issue such policy in Maryland.

4.1.2. (a) At least five (5) days before the Commencement Date, the Tenant shall deliver to the Landlord an original or a signed duplicate copy of each such policy (or at the Landlord's option, a certificate thereof), and (b) at least thirty (30) days before any such policy expires, the Tenant shall deliver to the Landlord an original or a signed duplicate copy of a replacement policy therefore (or at the Landlord's option, a certificate thereof). In the event the Tenant fails to pay any insurance premium when due, the Landlord shall have the option but not the obligation of paying such insurance premiums on behalf of the Tenant and, the Tenant shall immediately, upon demand, repay such sum to Landlord as Additional Rent.

4.1.3. Self Insurance. The Tenant, at its sole option, may elect to self insure the insurance required to be maintained in this Section 4 and the Indemnification obligation under sub-section 4.2., through Montgomery County's self insurance program. In the event the Tenant elects to self insure, the Tenant shall deliver to Landlord at least five (5) days before the Commencement Date and, annually thereafter, reasonably satisfactory evidence that such obligations are being covered by Montgomery County's self insurance program.

4.2. Indemnification of Landlord. The Tenant shall be responsible for, and shall defend, indemnify and hold harmless the State of Maryland and the Department of Natural Resources, and its members, officers, agents, and employees against and from, any and all liability or claim of liability (including reasonable attorneys' fees) arising out of (a) the use, occupancy, conduct, operation or management of the Premises during the Term, or (b) any work or thing whatsoever done or not done on the Premises during the Term by the Tenant, or (c) any breach or default by the Tenant in performing any of its obligations under the provisions of this Lease or applicable law, or (d) any negligent, intentionally tortious or other act or omission of the Tenant or any of its agents, contractors, servants, employees, subtenants, licensees or invitees during the Term, or (e) any injury to or death of any person or damage to any property occurring on the Premises during the Term; but excluding any liability arising from the sole negligence or intentional tortious act or omission of the Landlord or its agents, contractors or employees.

4.3. Immunity. Nothing in this Section 4 shall constitute a waiver of any immunity which the Landlord and/or Tenant may be entitled to under the laws of the State of Maryland, as amended from time to time.

## Section 5. Improvements to Premises.

5.1. General. The Tenant shall not make any alteration, addition or improvement to the Premises without first obtaining the Landlord's written consent thereto, which consent shall not be unreasonably withheld provided the contemplated improvement, alteration or addition is in compliance with the permitted uses of the Premises as outlined in Section 3. If the Landlord consents to any such proposed alteration, addition or improvement, it shall be



made at the Tenant's sole expense (and the Tenant shall hold the Landlord harmless from any cost incurred on account thereof). Any improvements made to the Premises by the Tenant shall be made only in a good and workmanlike manner, in compliance with plans and specifications to be approved in advance by the Landlord (which approval shall not be unreasonably withheld) and in compliance with all applicable laws, regulations and ordinances. The Tenant shall obtain and deliver to Landlord copies of all necessary permits, licenses and governmental approvals prior to making any alterations, additions or improvements. Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Premises by the Landlord or the Tenant shall, upon termination of this Lease, become the Landlord's property without payment therefore by the Landlord.

Section 6. Maintenance and services.

6.1. Maintenance by Tenant. The Tenant shall, at its sole cost and expense, maintain the entire Premises in a neat, orderly and safe condition. The Tenant accepts the Premises in an "as is" condition and shall be responsible for, and bear the cost of doing all things necessary to make the Premises safe and suitable for its intended use. The Tenant shall maintain the Premises in its primitive, natural open-space condition.

6.2. Public Utility Charges. The Tenant shall pay all charges for the supply, connection and consumption of electricity, gas, heat, water and telephone or other communication services used, and other services rendered or supplied, upon or in connection with the Premises and all other charges and expenses assessed against the Premises on or after the Commencement Date of this Lease, and shall indemnify and hold harmless the Landlord against and from any liability. Any improvements, additions or alterations required to be made to the Premises for utilities shall be done only in compliance with the provisions of Section 5 of this Lease.

Section 7. Landlord's right of entry. The Landlord and its agents shall be entitled to enter the Premises at all reasonable times upon two days telephonic notice (a) to inspect the Premises, (b) to make any repair to the Premises or, (c) for any other purpose relating to the operation or maintenance of the Premises, and (d) for fulfilling any other duties or obligations which the Landlord has as an agency of the State of Maryland, provided however, that no notice shall be required in the event of an emergency situation.

Section 8. Fire and other casualties. In case of any damage to or destruction of any improvements hereafter constructed on the Premises, Tenant, at its sole cost and expense, shall promptly commence and complete the restoration, replacement or rebuilding of such improvements as nearly as possible to its value, condition and character immediately prior to the damage or destruction.

Section 9. Condemnation.

9.1. Substantial Condemnation. If all or substantially all of the Premises are taken by the exercise of any power of eminent domain or are conveyed to or at the direction of any governmental entity under a threat of such taking (each of which is herein referred to as a "Condemnation"), this Lease shall terminate on the date (hereinafter referred to as "the Vesting Date") on which the title to so much of the Premises as is the subject of such Condemnation vests in the condemning authority.

9.2. Less than substantial Condemnation. If less than substantially all of the Premises is taken, as aforesaid, this Lease shall continue in full force and effect unless the Tenant (a) reasonably determines that its ability to use and occupy the



Premises, in substantially the same manner as contemplated in this Lease, has been and will continue to be substantially impaired after such Condemnation, and (b) notifies the Landlord thereof within thirty (30) days after the Vesting Date, in which event this Lease shall terminate on the date set forth in such notice (which date shall be at least thirty (30) days and not more than ninety (90) days after the date on which such notice is given); but

9.3. Condemnation Proceeds. Any proceeds from an award of damages given in connection with a condemnation shall become the sole property of the Landlord and shall be paid directly to the Landlord.

Section 10. Assignment and subletting.

10.1. The Tenant hereby acknowledges and agrees for itself and its successors and assigns in interest hereunder that it will not (a) assign this Lease or any of its rights under this Lease, as to all or any portion of the Premises or otherwise, or (b) make or permit any voluntary or involuntary total or partial sale, lease, sublease, assignment, conveyance, license, mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the occupancy or use of any or all of the Premises (each of which is hereinafter referred to as a "Transfer") without first obtaining the express written consent thereto by the Landlord and the State of Maryland Board of Public Works (which consent shall not constitute a consent to any subsequent such Transfer, whether by the person hereinabove named as "the Tenant" or by any such transferee). Any person to whom any Transfer is attempted without such consent shall have no claim, right or remedy whatsoever hereunder against the Landlord, and the Landlord shall have no duty to recognize any person claiming under or through the same. No Transfer made with or without the Landlord's consent shall alter or impair the obligations of the Tenant hereunder arising before such Transfer.

Section 11. Default.

11.1. Definition. It shall be an event of default ("Event of Default") if the Tenant fails (a) to pay any Annual Rent, Additional Rent or other sum which it is obligated to pay by any provision of this Lease, when and as due and payable hereunder and without demand therefore, or (b) to perform any of its other obligations under the provisions of this Lease.

11.2. Notice to Tenant; grace period. A n y t h i n g contained in the provisions of this Section to the contrary notwithstanding, on the occurrence of an Event of Default the Landlord shall not exercise any right or remedy on account thereof which it holds under any provision of this Lease or applicable law unless and until

11.2.1. the Landlord has given to the Tenant written notice to cure the defect causing the Event of Default, and

11.2.2. the Tenant has failed, (a) if such Event of Default consists of a failure to pay money, within five (5) days after the Landlord gives such written notice to pay all of such money, or (b) if such Event of Default consists of something other than a failure to pay money, within thirty (30) days after the Landlord gives such written notice to cure such Event of Default (or, if such Event of Default is not reasonably curable within such period of thirty (30) days, to begin to cure such Event of Default within such thirty (30) day period and to diligently pursue such cure thereafter until it is fully cured).

11.2.3. Notwithstanding the foregoing, no such notice of default shall be required to be given, and (even if the Landlord gives such notice) the Tenant shall be entitled to no such grace period, in any emergency situation in which, in the Landlord's



reasonable judgment, it is necessary for the Landlord to act to cure such Event of Default without giving such notice.

11.3. Landlord's rights on Event of Default.

11.3.1. On the occurrence of any Event of Default, the Landlord may (subject to the operation and effect of the provisions of subsection 11.2.)

(a) terminate this Lease by giving written notice of such termination to the Tenant, which termination shall be effective as of the date of such notice or any later date therefore specified by the Landlord therein and upon such termination repossess the Premises in accordance with Section 1.2 of the Lease and the requirements of applicable law; and/or

(b) cure such Event of Default in any other manner; and/or

(c) pursue any combination of such remedies and/or any other right of remedy available to the Landlord on account of such Event of Default under this Lease and/or at law or in equity. Notwithstanding anything contained herein to the contrary, in the Event of Default arising from Tenant's failure to maintain the Premises as required under Section 6.1. solely because of the fact that Tenant did not receive sufficient appropriated funds in its Montgomery County Budget to cover the maintenance expenses for the Premises, the Tenant shall not be liable for monetary damages to Landlord arising out of a contract claim, except a contractual claim arising from Tenant's indemnification under Section 4.2., but the Tenant shall remain liable under any tort claim asserted by the Landlord or any other person or entity.

Nothing herein contained shall limit or prejudice the Landlord's right to damages, by reason of such termination.

11.3.2. On the occurrence of an Event of Default, the Tenant shall, immediately on its receipt of a written demand therefore from the Landlord, pay to Landlord, as Additional Rent, an amount sufficient to reimburse the Landlord for (a) all expenses (including, by way of example rather than of limitation, any and all repossession costs, management expenses, operating expenses, legal expenses and attorneys' fees) incurred by the Landlord (i) in curing or seeking to cure any Event of Default and/or (ii) in exercising or seeking to exercise any of the Landlord's rights and remedies under the provisions of this Lease and/or at law or in equity on account of any Event of Default, and/or (iii) otherwise arising out of any Event of Default.

Section 12. Notices. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be (a) given in writing, and (b) deemed to have been given (i) forty-eight (48) hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, if to the Landlord: Department of Natural Resources, c/o Director of Enterprise Development, Capital Programs Administration, 2012 Industrial Drive, Annapolis, Maryland 21401, and if to Tenant: Montgomery County, Maryland, Department of Facilities and Services, Real Estate Management, 110 N. Washington Street, Room 318, Rockville, Maryland 20850 or to such other address in the United States of America as such party may designate from time to time by notice to the other, or (ii) (if such party's receipt thereof is acknowledged in writing) upon its hand or other delivery to such party.

Section 13. General.

13.1. Effectiveness. This Lease shall become effective upon and only upon its execution and delivery by each party hereto, and upon receipt of approval by the Board of Public Works.



13.2. Complete understanding. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in the provisions of this Lease including exhibits attached hereto. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

3.3. Amendment. This Lease may be amended by and only by an instrument executed and delivered by each party hereto.

13.4. Applicable law. This Lease shall be given effect and construed by application of the law of Maryland.

13.5. Waiver. The Landlord shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by the Landlord in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

13.6. Severability. No determination by any court, governmental body or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

13.7. Non Discrimination. The Tenant under the provisions of Title VII of the Civil Rights Act of 1964 agrees not to discriminate against any employee or applicant for employment because of sex, race, age, creed, color, religious affiliation, mental or physical handicap, or national origin. Tenant further agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the above agreement not to discriminate. The Tenant will not discriminate in the conduct and operation of its business in the leased premises against any person or group of persons because of sex, race, age, creed, color, religious affiliation, mental or physical handicap or national origin.

IN WITNESS WHEREOF, each party hereto has executed and ensealed this Lease or caused it to be executed and ensealed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS:

[Signature]

STATE OF MARYLAND  
DEPARTMENT OF NATURAL RESOURCES

BY: [Signature] (SEAL)  
Torrey C. Brown, M.D.  
Secretary

WITNESS:

Robert L Baird

MONTGOMERY COUNTY

BY: [Signature] (SEAL)  
Sidney Kramer  
County Executive

APPROVED FOR FORM AND  
LEGAL SUFFICIENCY

Approved as to form and legality  
Montgomery County, Md. County's Office  
[Signature] 9/4/90

[Signature]  
DCS STAFF ATTORNEY  
DATE 1/23/91



STATE OF MARYLAND  
BOARD OF PUBLIC WORKS

BY: William Donald Schaefer (SEAL)  
Governor

BY: Louis L. Goldstein (SEAL)  
Comptroller

BY: Lucille Maurer (SEAL)  
Treasurer

WITNESS:

James J. McGinty, Jr.  
Secretary, Board of  
Public Works

Approved as to form  
and legal sufficiency  
this 2nd day of  
October, 1989.90

Danella Davis Anderson  
Assistant Attorney General

Execution of the above Lease was  
authorized and approved by the Board of  
Public Works at a meeting held on 12-12-90  
as Item 11 -L.

Director, Office of Real Estate  
Department of General Services

STATE OF MARYLAND  
COUNTY OF ANNE ARUNDEL, TO WIT:

BEFORE ME, THE UNDERSIGNED Notary Public of the State of  
Maryland, in and for the aforesaid County, personally appeared this  
30th day of October, 1990, Torrey C. Brown, M.D., Secretary  
to the Department of Natural Resources of the State of Maryland,  
who acknowledged the execution of the aforementioned agreement to  
be the true, lawful and voluntary act of the Department of Natural  
Resources.

Tera H. Matosky  
Notary Public  
My Commission expires 11/1/93

STATE OF MARYLAND  
COUNTY OF MONTGOMERY, TO WIT:

BEFORE ME, THE UNDERSIGNED Notary Public of the State of  
Maryland, in and for the aforesaid County, personally  
appeared this 2 day of October, 1990, Sidney Kramer, County  
Executive of Montgomery County, who acknowledged the execution of  
the aforementioned agreement to be the true, lawful and voluntary  
act of Montgomery County.

Suz G. Coletta  
Notary Public  
My Commission expires March, 1992

STATE OF MARYLAND  
COUNTY OF ANNE ARUNDEL, TO WIT:

BEFORE ME, THE UNDERSIGNED Notary Public of the State of  
Maryland, in and for the aforesaid County, personally appeared this  
21st day of March, 1990, James J. McGinty, Jr., Secretary  
to the Board of Public Works of the State of Maryland, who  
acknowledged the execution of the aforementioned agreement to be  
the true, lawful and voluntary act of the Board of Public Works.

Marion J. Bochner  
Notary Public  
My Commission expires 11-1-91